vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5420 OF 2007

Shri Hanmant Anant Haval ... Petitioner

V/s.

Snehal Sunil Mangale ... Respondent

a/w

WRIT PETITION NO.5724 OF 2007

Indubai Krishna Parit ... Petitioner

V/s.

Snehal Sunil Mangale ... Respondent

Mr.A.B. Borkar for Petitioners
Mr.P.S. Dani for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **DECEMBER 6, 2007**

P.C.:

. These petitions challenge the order of the Joint Civil Judge, Junior Division, Kagal whereby the application filed by the respondent plaintiff has been allowed subject to payment of costs of Rs.300/-. The case of the petitioner defendant is that the plaintiff has filed that application to permit her to examine herself, after the arguments in the case were over. This application has been made in view of various judgments of the Supreme Court and this Court especially in the case of *Janki Vashdeo Bhojwani & Anr. v/s. Indusind Bank Ltd. & Ors.*, **2005 I Mh.L.J. 9**. The

Supreme Court in this decision has taken the view that the deposition by a power of attorney holder cannot be believed if it is not to his knowledge. The plaintiff in order to remove any technical flaw in her case has made the aforesaid application. This application was vehemently opposed by the defendant. However, the trial Court has permitted the application on payment of costs, since in its opinion, it was necessary to do so in the interest of justice.

2. Mr.Borkar, appearing for the petitioner, submits that such a procedure adopted by the trial Court is incorrect. According to him, this would lead to a retrial of the entire case which would be endless. He submits that Order 18 Rule 3(a) does not vest the trial Court with the jurisdiction to allow a party to lead evidence after the arguments are over. He submits that the judgment of the Supreme Court cannot give rise to the present application since the Supreme Court merely declares the law as it is.

3. On the other hand, Mr.Dani, appearing for the respondents, submits that this Court should not, under Article 227 of the Constitution of India, interfere in procedural aspects of a trial. He submits that it was necessary for the respondent to examine the holder of her power of attorney since the trial was prolonged and

it was difficult for her to obtain leave from the bank in which she was employed, each time the Court was in session for trial in her suit. He, therefore, submits that the trial Court has merely permitted the parties to lead further evidence which would not lead to a retrial of the matter.

3. Having heard both the Counsel, I am of the view that the trial Court has committed no error in allowing the plaintiff to lead evidence. The trial Court has given adequate and justifiable reasons for allowing the application. Hence, the petitions are rejected. However, the plaintiff will lead by way of examination in chief, only such evidence as has been already deposed to by the holder of her power of attorney. The plaintiff will not bring any new facts on record in her examination in chief. The respondent would be at liberty to cross-examine the plaintiff and to lead evidence in rebuttal if necessary. The trial Court will consider the evidence of the respondent as well as that of the holder of her power of attorney and assess and appreciate the same in accordance with law.